

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimants Edgar Burns and Rudy Burns

in re Account of Alfred Bernstein

Claim Numbers: 219188/AY; 219923/AY

Award Amount: 53,500.00 Swiss Francs

This Certified Award is based upon the claims of Edgar Burns (“Claimant Edgar Burns”) and Rudy Burns (“Claimant Rudy Burns”) (together the “Claimants”) to the accounts of Alfred Bernstein (the “Account Owner”) and *Mobesa AG* at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as none of the Claimants have in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

The Claimants submitted Claim Forms identifying the Account Owner as their father, Alfred Dan Bernstein, who was born on 15 December 1893 in Berlin, Germany, and was married to Anita Bernstein, née Rechnitz. The Claimants stated that they are their parents’ only children. According to the Claimants, their father, who was Jewish, was a businessman who resided in Berlin at Drachenfelsstrasse 10, and at Marienbaderstrasse 9, where the company he owned, *Bahnhandel*, was also located. The Claimants stated their father was also the owner of a company named *Mobesa AG*, which was founded in 1931, and was located at Löwenstrasse 51 in Zurich, Switzerland. The Claimants further stated that their father traveled to Switzerland at least once a year for business purposes when the Swiss government would permit him to do so. The Claimants indicated that their father sent approximately 100,000.00 Reichsmark (“RM”) to Switzerland through a person unknown to the Claimants. According to the Claimants, their father was deported to Buchenwald concentration camp in June 1938 and released in August 1938, after being forced to sign over much of his own and his wife’s property to the *Gestapo*. According to the Claimants, in November 1938, Alfred Bernstein was once again arrested, and was sent to Sachsenhausen concentration camp, from where he was released in December 1938. The Claimants indicated that the family then fled to the United Kingdom, where they stayed until 1947. The Claimants stated that their family emigrated to the United States in 1947, and changed their last name from Bernstein to Burns upon obtaining United States citizenship in 1953. The Claimants indicated that their father died on 4 February 1966 in Los Angeles, California, the United States, and that their mother passed away on 29 April 1966, also in Los Angeles.

Claimant Edgar Burns indicated that he was born on 22 March 1927 in Berlin, and Claimant Rudy Burns indicated that he was born on 28 April 1930, also in Berlin.

In support of their claims, the Claimants submitted their father's release form from the Sachsenhausen concentration camp, his German passport and marriage certificate, indicating that their father resided in Berlin. The Claimants further submitted their own birth certificates, indicating that they were born in Berlin and that their father was Alfred Bernstein. Finally, the Claimants submitted their father's will, which indicates that he changed his name to Alfred Burns.

Claimant Edgar Burns previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting his entitlement to a Swiss bank account at the Zurich branch of the Bank owned by Alfred Bernstein from Berlin, Germany, and by *Mobesa AG* from Zurich, Switzerland.

Claimant Edgar Burns also submitted a balance sheet of *Mobesa AG*, dated 31 December 1939, a letter dated 7 January 1939 from Dr. G. S. Abt, an attorney in Zurich who was a member of the board of directors of *Mobesa AG*, and an account statement issued by the Zurich branch of the Bank on 31 December 1931. These documents show that the Claimants' father was the majority shareholder of *Mobesa AG* and that the other shareholders were Anita Bernstein and the Bernstein Estate (*Bernstein Nachlass*). These documents further indicate that *Mobesa AG* held a demand deposit account at the Zurich branch of the Bank. The amount in this account was 360.50 Swiss Francs ("SF") as of 31 December 1931.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Alfred Bernstein, who resided in Berlin, Germany. The Bank's record indicates that the Account Owner held a demand deposit account that was opened in March 1931 and closed on 31 December 1933. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report any account belonging to *Mobesa AG*.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the

CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father's name and country of residence match the published name and country of residence of the Account Owner. The Claimants stated that their father resided in Berlin, which matches unpublished information about the Account Owner available in the Bank's record. In support of their claim, the Claimants submitted their father's release form from Sachsenhausen concentration camp, his German passport, his marriage certificate and their own marriage certificates, which all indicate that their father resided in Berlin, providing independent verification that the person who is claimed to be the Account Owner resided in the same city recorded in the Bank's record as the residence of the Account Owner.

The CRT notes that Edgar Burns filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Alfred Bernstein from Berlin, Germany, and/or *Mobesa AG* from Zurich, Switzerland, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

The CRT notes that the other claims to this account were disconfirmed because those claimants provided different countries or cities of residence than that of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and was deported to and imprisoned in the Buchenwald and Sachsenhausen concentration camps in 1938, after which he managed to flee Germany.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that they are Alfred Bernstein's sons. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With respect to the demand deposit account held by the Account Owner, given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1939, and the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumption to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

With respect to the account held by *Mobesa AG*, the CRT notes that the company was located in Switzerland. However, given that the records pertaining to the account indicate that the company was wholly owned by the Account Owner and his family; and given that the Account Owner was imprisoned by the Nazis and released only upon his surrender of his assets, the CRT concludes that it is plausible that the proceeds of this account were not paid to the Account Owner or his heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor their heirs received the proceeds of the demand deposit account held by the Account Owner.

Amount of the Award

In this case, the award is for one demand deposit account held by the Account Owner and one demand deposit account held in the name of *Mobesa AG*.

With respect to the Account Owner's demand deposit account, pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was SF 2,140.00.

With respect to the demand deposit account held by *Mobesa AG*, the Bank's records indicate that the value of the 31 December 1931 was SF 360.50. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00.

The total average value of the two demand deposit accounts is SF 4,280.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 53,500.00.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents. In this case, the Claimants submitted their parents' will, each of which names the other as their sole heir, and in the case that one predeceases the other, that their sons shall inherit from them in equal shares by representation. Accordingly, each of the Claimants is entitled to one-half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
10 September 2004